BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

STEPHEN K. SMITH)	
Claimant)	
)	
VS.)	
)	Docket No. 262,957
HUTCHINSON HOSPITAL)	
Respondent)	
Self Insured)	

ORDER

Respondent appeals from the Preliminary Hearing Order entered by Administrative Law Judge Bruce E. Moore dated May 18, 2001, wherein respondent was ordered to provide medical treatment and to pay certain medical bills.

ISSUE

Whether the claimant's accidental injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

On December 27, 2000, claimant was performing his regular job duties at Hutchinson Hospital, putting supplies away and moving trash bags, when he felt a pain in his mid sternal area. Claimant has no recollection of what happened next. He awoke in the hospital emergency room.

The evidence establishes claimant suffered an accidental injury that arose in the course of his employment, as it occurred while he was at work and in the service of his employer. The only question is whether the claimant's accidental injury arose out of his employment with respondent. See K.S.A. 44-501(a).

As noted by Judge Moore, the Appeals Board has repeatedly held that unexplainable falls or neutral risks occurring in the course of an employee's employment, even though they have no particular employment or personal character, are compensable.

In so holding, the Appeals Board has followed the majority rule as set out in <u>Larson's</u> Workers' Compensation Law, § 7.04 (1999).

Respondent, however, disputes that claimant's fall was unexplained. Instead, respondent contends that it was an idiopathic fall which, therefore, renders this claim noncompensable. See Rogers v. Wal-Mart, WCAB Docket No. 233,965 (May 2000). Claimant fell because he lost consciousness. If he lost consciousness due to a personal condition and not due to a risk or hazard associated with the employment, the claim is not compensable. See Bennett v. Wichita Fence Co., 16 Kan. App.2d 458, 824 P.2d 1001 (1992). But the facts do not establish that claimant's loss of consciousness was due to a personal condition unrelated to his work activities, such as a seizure disorder or a cardiac event. The medical opinions point either to the work activities being contributory such as with vertebral basilar insufficiency or postural hypotension, or else an unknown cause. In either case the claim is compensable.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Bruce E. Moore dated May 18, 2001, should be, and is hereby, affirmed.

II IS SO ORDERED.	
	Dated this day of August 2001.
	BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS Kendall R. Cunningham, Wichita, KS Bruce E. Moore, Administrative Law Judge Philip S. Harness, Director